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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/976,146	10/15/2001	Andre Marton	P67198US0	9291

7590

08/18/2004

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EXAMINER

YEUNG, GEORGE CHAN PUI

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 08/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/976,146

Applicant(s)

MARTON, ANDRE

Examiner

George C Yeung

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 May 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-28 ~~is~~ are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 ~~is~~ are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 1/30/2002
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

#### ***Claim Rejections - 35 USC § 112, FIRST PARAGRAPH***

Claims 5-7, 9, 12, 13, 16, 17 and 23-28 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. It is not clear exactly what kind of alkanes can be mixed with a salt and acetic acid esters or acetone to form a coolant for the freezing or superficial freezing of food as recited in claims 5 and 26. Note that no new matter can properly be introduced into the specification.

#### ***Claim Rejections - 35 USC § 112, SECOND PARAGRAPH***

Claims 3, 5-7, 9, 12, 13, 16, 17 and 23-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention for the following reasons:

1. The term "acetone" recited in claim 3, line 3, is redundant since this term has already been incorporated into claim 1, line 3, from which claim 3 indirectly depends.
2. It is not clear whether the term "alkanes" recited in claim 5 (line 2), claim 6 (line 2), and claim 26 (line 5) refers to methane, butane or pentane.

3. It is also not clear whether or not the term "alkanes" recited in claim 6, line 2, refers to the alkanes as recited in claim 5, line 2.
4. The limitations "alkanes" and "acetic acid ester" recited in claim 6, lines 2-3, are redundant since these limitations have already been incorporated into claim 5, lines 2-3, from which claim 6 depends.
5. The term "acetone" recited in claim 7, line 3, is redundant since this term has already been incorporated into claim 5, line 3, from which claim 7 indirectly depends.
6. Claim 27 is improper in the recitation of "according to claim 27" since claim 27 depends upon itself.
7. There is no antecedent basis for "the cutting and packaging of foods" as recited in claim 28, line 1. An amendment to claim 28, lines 1-2, changing "Process for the cutting and packaging of foods, wherein the process steps according to claim 26 are followed by" to -- The process according to claim 26 further comprises -- would obviate this rejection.

***Claim Rejections - 35 USC § 103***

Claims 1-9, 18, 19, 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marton (DE 19860442A1) in view of Cipolletti et al [Journal of Food Science, (1977), 42(4) 911-916 ]. Marton discloses a process for the freezing or surface-freezing of foods comprising the step of introducing the foods into a coolant comprising chilled alcohol, alkanes, acetic acid esters, acetone and distilled water. It

would have been obvious to provide the coolant of Marton with salt since Cipolletti et al show the conventional expedient of freezing foods with a coolant comprising ethanol and salt.

Claims 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marton (DE 19860442A1) in view of Cipolletti et al as applied to claims 1-9, 18, 19, 26, and 27 above, and further in view of Orre (EP 0290666 B1). It would have been obvious to provide the coolant of Marton with ethanol in a range of 50 to 90% by weight since Orre shows the conventional expedient of freezing foodstuffs with a deep-freezing solution containing 35 to 100% by weight of ethanol. Moreover, it does not appear that the claimed use of between 50% and 90% by weight of alcohol set forth in claims 10-13 is critical in view of page 4, lines 9-10 of the instant specification where it discloses [p]referably the coolant contains between 50% and 90%, more preferably about 70% of alcohol (based on the total weight)" (emphasis added). Preferred limitations, without more, are not critical. See *In re Rauch*, 156 USPQ 502.

Claims 14-17 and 20-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marton (DE 19860442A1) in view of Cipolletti et al as applied to claims 1-9, 18, 19, 26 and 27 above, and further in view of Borup et al (WO 99/21429). It would have been obvious to provide the coolant of Marton with salt in a range of 0.5% to 10.0% by weight since Borup et al show the conventional expedient of chilling meat with a coolant containing 2 to 15% by weight of salt. With regard to claims 20-25, it would have been obvious to provide the coolant of Marton with a flavoring material

since it is an obvious matter of expediency depending upon the desired taste of the final food product.

Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marton (DE 19860442A1) in view of Cipolletti et al as applied to claims 1-9, 18, 19, 26 and 27 above, and further in view of Sundara. It would have been obvious to package the frozen food product of Marton in plastic sheeting since Sundara shows the conventional expedient of packaging frozen food product into suitable plastic containers under vacuum.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George C. Yeung whose telephone number is (571) 272-1412. The examiner can normally be reached on Monday-Friday from 10:30 AM to 7:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton C. Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

G. C. Yeung/af  
August 17, 2004



**GEORGE C. YEUNG**  
**PRIMARY EXAMINER**